IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6949 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VYARA NAGARPALIKA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6949 of 2001

MR SUNIT S SHAH for Petitioner No. 1

MR MANISH DAGLI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/05/2002

ORAL JUDGEMENT

Rule. Mr Manish Dagli, learned AGP waives service of Rule for the respondents.

2. This petition under Article 226 of the Constitution is a case exhibiting an extraordinary degree of insensitivity on the part of the State of Gujarat and the Collector, Surat in turning down the request of the Vyara Municipality for allotment of a parcel of land for establishing a public garden and setting up public

latrines within the municipal limits of the town, when the Government has not used the land for any purpose for the last more than five years.

3. The petitioner-Municipality submitted a request letter dated 18.10.1995 requesting the Collector, Surat to allot the land in Survey No. 241 Paiki admeasuring 2278.5 sq.mtrs. within the revenue limits of the Municipality. According to the Municipality, the land was reserved for city improvement. According to the Municipality, the land is required for establishing a public garden/children park for the convenience and benefit of the public at large. The request conveyed through the aforesaid letter dated 10.10.1995 was not accepted by the Collector though the Municipality was prepared to pay the price for the land in question and the Municipality had also represented that it would abide by the directions of the State Government with regard to use of the land. The Municipality again passed resolution dated 30.7.1996 reiterating this request. The Municipality also relied on the Government Resolution dated 6.4.1992 to the effect that the lands for public purposes are to be granted to the Municipality when a Nagar Panchayat is converted into a Municipality. When the Collector sent the letter dated 4.2.1998 (Annexure "N") informing the petitioner that it was not possible to grant any land to the Municipality without payment of the price, but since the land was required for public purposes, whether the Municipality was prepared to pay price for the same, the Municipality answered in the affirmative by their letters dated 13.2.1998, 16.9.1998 and 3.4.2000 at Annexures "O", "P" and "Q" respectively. Even then the Collector did not accept the request of the Municipality and, therefore, the Municipality has filed the present petition for directing the Government to allot the aforesaid land to the Municipality.

4. In response to the notice issued by this Court, affidavit in reply has been filed by the respondent-Deputy Collector stating that the petitioner had not pointed out the fact that the petitioner's request was earlier rejected and the same was communicated by letter dated 18.2.2000. Secondly, it is stated that the Government requires the land for construction of Government offices and staff quarters as informed vide communication dated 15.2.1997.

5. At the hearing of this petition, the learned counsel for the petitioner-Municipality has submitted that the need for establishing a public garden and public latrines is already highlighted by the

petitioner-Municipality in the resolution dated 30.5.1995 (Annexure "C") which was also conveyed to the Collector on 10.10.1995 (Annexure "D"). The land is centrally located in Vyara Town. It is surrounded by the Bus Station, schools and shopping centres, but there is no place for the people to sit and relax. The land was originally very uneven, but the Municipality levelled it at its own expense.

It is further submitted that although the decision was taken on 15.2.1997, as stated in the reply affidavit, that the land is required for constructing Government offices and staff quarters, no such construction has been put up on the aforesaid land in the last more than 5 years. The learned counsel for the petitioner has also referred to the provisions of Section 87(c)(l) and Section 91-A(b) laying down the functions of the Municipality which includes establishing public gardens and latrines for the benefit of the people at large.

6. On the other hand, Mr Manish Dagli, learned AGP for the respondents has submitted that the land belongs to the Government and it is for the Government to decide whether or not to allot the land or not to the Municipality.

7. Having heard the learned counsel for the parties, it appears to the Court that the Government has not at all considered the statutory functions which the Municipality is required to discharge under the provisions of the Gujarat Municipalities Act, 1963.

Chapter VI - Functions of Municipalities : Sec. 81 - It shall be the duty of every municipality to make reasonable and adequate provision for the following matters within the limits of the municipality borough, namely :-

....

C. In the sphere of public health and sanitation -

(l) constructing, altering and maintaining public latrines and urinals.

Sec. 91 - A municipality may, at its discretion provide, either wholly or partly, out of the municipal property and fund for the following

matters within the limits of municipal borough, namely -

A. In the sphere or public works.

(b) constructing, establishing or maintaining public parks, gardens ....

It is not the case of the Government that the request of the Municipality is not genuine or reasonable. It is also not the case of the Government that by now the Government has constructed Government offices and staff quarters or that they have taken any decision to construct Government offices and staff quarters on the land in question. It is not that the Municipality had demanded the land free of cost or that it had demanded any funds from the Government for establishing the garden or the latrines. On the contrary, even if the land is temporarily allotted to the Municipality for establishing a public garden and latrines, ultimately in future if the Government decides to construct Government offices and staff quarters, that can be done.

In view of the fact that the Municipality is not permitted to discharge its statutory functions under the provisions of Sections 87 and 91-A of the Act and the Government has not made any use of the land in question for the last more than 5 years nor is there any firm decision to construct any Government offices and staff quarters, no useful purpose will be served by keeping the land idle. On the contrary, it will be in the public interest and in conformity with the provisions of the Gujarat Municipalities Act that the land is allotted to the petitioner Municipality for the purpose of establishing a public garden and public latrines.

8. In view of the above discussion, this petition is allowed. The respondents are directed to allot to petitioner Vyara Municipality the land admeasuring 2278.50 sq. mtrs. of revenue survey No. 241 Paiki in Vyara town for establishing a public garden/park and latrines for the public purpose after the Municipality pays such price as may be determined by the competent officer of the State Government within one month from the date of receipt of the writ of this Court. When such price is determined within the aforesaid time limit, the petitioner Municipality shall pay the same within one month from the date of communication about determination of the price. Within one week from the date of such payment, the respondents shall put the petitioner Municipality in possession of the said land.

It will be open to the respondents to impose a condition in the order of grant that in case the State Government requires the land in future or if the petitioner Municipality does not establish a public garden and latrines within 6 months from the date on which it is put into possession of the land in question, the respondents will be at liberty to take appropriate steps for resuming the land in question.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-